

*Not Used
P/C/S*

76 - 1295

In The
Supreme Court of the United States

October Term, 1976

Supreme Court, U. S.

F I L E D

MAR 18 1977

BASIL BERNARD FINNEY MICHAEL RODAK, JR., CLERK

Petitioner

v.

THE UNITED STATES

Defendant

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Claims

No. 297-72

Basil B. Finney

5501 Rutland St.

Riverside, Calif. 92503

(714) 687-3595.

In Pro Se.

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Now comes the plaintiff, **Basil B. Finney, In Pro Se,**
~~✓~~ to request this most Honorable Court to grant his
Writ of Certiorari to review the judgement of the
United States Court of Claims, entered in the above
entitled case on April 16, 1976, for the following rea-
sons;

- 1. Judicial errors. (2)**
- 2. Contempt of Court. (2)**
- 3. Perjury.**

1. Judicial errors as follows;

1. Plaintiff made a motion for default under rule #114 (b) 3, 4 and 5 for non-compliance of a pre-trial order. (Tr. 18, 19, 20, 21, 22, 23, 24, 28, 29 and 30).

2. Plaintiff made the motion for dismissal, not the defendant, Plaintiffs motion was not denied. (Tr. 342).

2. Contempt of Court as follows;

1. The defendant having not complied to a direct order of the Court, in the respect that he has not supplied the plaintiff with exhibits numbered 26, through 41. (Tr. 19, 20, 21 and 22. Tr. 28, 22, 23).

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2. The defendant procured the Keithley and Miller affidavits, not the Plaintiff, so how can the defendant successfully rebut or deny them without suborning the witnesses?

3. Perjury as follows;

1. The plaintiff's exhibit #8 was not allowed to be admitted as evidence because the opinion of the court is that it was hearsay, yet on numerous occasions the defendant has stated it was used on a two handled MET. Defendants answer filed on Nov. 17, 1972 pg. #3.

Defendants answer filed on June 20, 1973 pg. #3.

Defendants paper filed on Nov. 20, 1974 pg. #8, IV, (19).

Defendants paper filed on Jan. 26, 1973, Pg. #9.

Defendants paper filed on Jan. 21, 1975 Pg. #3, IV, 7.

Opinion filed on Oct. 16 1975, Pg. #8.

The defense stated also that a two-handled MET was never in existence. (Tr. 240, 16 and 17. Tr. 278, lines 3 through 17, Tr. 290, 24 and 25, Tr. 291, lines 1 through 11 and Tr. 293, lines 3 through 11).

2. Affidavits of Keithley and Miller (plaintiff's exhibit #6 procured by the defendant clearly states a one

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handled MET). (Tr. 322, lines 5, 6, 7, 13, 14, 15 and 16). (Tr. 323, 1, 2, 3, 10, 11, 12, 13 and 14), are all denials of a two handled MET. (Tr. 329 lines 10, 11, 12, 13, 20, 21, 22, 23 and 24), are admissions of a two handled MET. (Tr. 330 lines 7, 8 and 9. Tr. 331 lines 2, 3, 4, 5, 6 and 7. Tr. 331 lines 17, 18, 19 and 20 the witness could not state or recall if there was a one handled or two handled MET.

OPINION

If the Keithley and Miller affidavits are in good faith, then the testimony of Mr. Lutz, Mr. Alan Shepard and the defense attorneys is false. If the testimony of Mr. C. Lutz, Mr. Alan Shepard and the defense attorneys is in good faith, then Mr. Keithley and Mr. Miller's affidavits are false.

If the testimony of Mr. C. Lutz, Mr. Alan Shepard, the Keithley and Miller affidavits and the defense attorneys statements are true, then only Mr. Alan Shepard's testimony is perjured and the doctrine of De minimis curat lex does not apply.

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The defendant still has the METs stored somewhere on government property and the defendant did wrap the handles and did make the gloves, which also constitutes infringement. See Bereslavsky v. Standard Oil Co. of N.J.D.C. Md. 1949. 82 F. Supp. 939. Also Oisson v. U.S. 1938 25 F. Supp. 405, 87, Ct. Cl. 642. and Bethelom Steel v. U.S. 1918 53 Ct. Cl. 348. affirmed 42 S. Ct. 334. 258. U.S. 321. 66 L. Ed. 639 and (Tr. 278).

On the issue of validity of the plaintiff's patent, the defense requested the Court to invalidate the patent and the Court had all of the exhibits #1 through #41. (The plaintiff did not), then a full trial was held and the Court could not invalidate on any of the grounds presented by the defense. (Tr. 344, 345, 346 and 347).

IN CONCLUSION

There has been an infringement of the Plaintiff's patent and the Plaintiff's patent is valid, then the Plaintiff respectfully requests this Court order a Federal Grand Jury to investigate this matter for pos-

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sible criminal action against the offenders, to grant the Plaintiff's request for a Writ of Certiorari and to now award judgement in favor of the Plaintiff for whatever this most Honorable Court deems fair, equitable and proper.

Respectfully submitted,

Basil B Finney

Basil B. Finney

In Pro Se

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CERTIFICATE OF SERVICE

I certify that a copy of the Petition for a Writ of Certiorari filed on behalf of Basil B. Finney, In Pro Se, was served upon Carla A. Hills, Sec't. of H.U.D. who defended this claim and was Assistant Deputy Attorney General at that time. Also Robert Plotkin, who was Patent Counsel for the defense and also the United States Attorney General. Mr. Matthews Patent Counsel for Manned Space Center, Houston, Texas, has been served. This was done by mailing a copy first class mail, Certified return receipt requested, postage prepaid;

this 22nd day of Oct. 1976

Basil B Finney

BASIL B. FINNEY

Supreme Court, U. S.

E I L E D

APR 11 1977

No. 76-1295

MICHAEL PODAK, JR., CLERK

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OCTOBER TERM, 1976

BASIL BERNARD FINNEY, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF CLAIMS*

MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION

WADE H. McCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION

The petition for a writ of certiorari was filed out of time. The judgment of the Court of Claims was entered on April 16, 1976. The time for filing a petition for a writ of certiorari was not extended and, accordingly, the 90-day period provided in 28 U.S.C. 2101(c) expired on July 15, 1976. The petition was filed on March 18, 1977.

The time limit imposed by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 417-418. Accordingly, the petition should be denied.

Respectfully submitted.

WADE H. McCREE, JR.,
Solicitor General.

APRIL 1977.

DOJ-1977-04